

**T.L.B. Plastics Corporation and United Electrical,
Radio and Machine Workers of America (UE).
Case 13-CA-22375**

March 7, 1983

DECISION AND ORDER

**BY CHAIRMAN MILLER AND MEMBERS
ZIMMERMAN AND HUNTER**

Upon a charge filed on July 12, 1982, by United Electrical, Radio and Machine Workers of America (UE), herein called the Union, and duly served on T.L.B. Plastics Corporation, herein called Respondent,¹ the General Counsel of the National Labor Relations Board, by the Regional Director for Region 13, issued a complaint on August 9, 1982, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on July 1, 1982, following a Board election in Case 13-RC-15816, the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate,² and that, commencing on or about July 7, 1982, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. On August 17, 1982, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On September 27, 1982, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on October 4,

1982, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter filed a response to the Notice To Show Cause.³

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

In its answer to the complaint, Respondent admits that it was asked, but that it has declined, to bargain with the Union. It contends, however, that its refusal to bargain was justified since, as a result of certain alleged objectionable conduct engaged in by the Union prior to the election, the Union's certification was invalid.⁴

A review of the record herein, including the record in Case 13-RC-15816, reveals that, pursuant to a Stipulation for Certification Upon Consent Election, an election was conducted on October 2, 1981, in which the Union received a majority of the valid votes cast.⁵ On October 7, 1981, Local No. 18 filed timely objections to the election which the Regional Director, after an investigation, found raised substantial and material issues that could best be resolved at a hearing.⁶ After a hearing on the objections, the Hearing Officer on January 28, 1982, issued a report recommending that the objections be overruled in their entirety and that the appropriate certification be issued. On February 25 and 26, 1982, Respondent and Local No. 18, respectively, filed exceptions to the Hearing Officer's report⁷ and on March 5, 1982, the Union filed a

¹ While admitting having been served by the Regional Director through certified mail with a copy of the charge, Respondent contends that service was defective since the charge was not served by the Charging Party in accordance with Sec. 102.14 of the Board's Rules and Regulations. That contention is without merit as, under Sec. 11(4) of the Act, a charge may be served by the Regional Director through certified mail and such copy need not, under Sec. 10(b) of the Act, be served personally by the Charging Party. See *N.L.R.B. v. Ann Arbor Press*, 188 F.2d 917 (6th Cir. 1951); *Pargament Fidler, Inc.*, 173 NLRB 696, 697 (1968); *Schreiber Manufacturing Co., Inc.*, 262 NLRB 1196, 1204, fn. 21 (1982).

² Official notice is taken of the record in the representation proceeding, Case 13-RC-15816, as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See *LTV Electrosystems, Inc.*, 166 NLRB 938 (1967), enf'd. 388 F.2d 683 (4th Cir. 1968); *Golden Age Beverage Co.*, 167 NLRB 151 (1967), enf'd. 415 F.2d 26 (5th Cir. 1969); *Intertype Co. v. Penello*, 269 F.Supp. 573 (D.C.Va. 1967); *Follett Corp.*, 164 NLRB 378 (1967), enf'd. 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

³ In response to the Notice To Show Cause, Respondent filed a Cross-Motion for Summary Judgment admitting that there are no genuine issues of material fact to be tried and that, for the reasons set forth in its exceptions to the Hearing Officer's report in Case 13-RC-15816, it was entitled, as a matter of law, to a judgment in its favor.

⁴ The complaint also alleges, and Respondent readily admits, that its refusal to bargain with the Union was designed to test and obtain judicial review of the Board's certification.

⁵ The tally of ballots issued that day revealed that, of 168 valid votes cast, 89 were cast for the Union and 55 were cast for an Intervenor, Plastic Workers Union, Local No. 18, AFL-CIO (herein referred to as Local No. 18), with 2 nondeterminative challenged ballots remaining.

⁶ In its objections, Local No. 18 claimed that, prior to the election, the Union intimidated and threatened employees with physical violence and that the Employer interrogated employees concerning their union sympathies, threatened them with loss of insurance benefits if either union won, and promised employees a grievance procedure if the unions lost the election.

⁷ Respondent excepted to the Hearing Officer's refusal to find that the Union engaged in a campaign of fear, intimidation, and violence prior to the election. Local No. 18's exceptions focused generally on the Hearing Officer's failure to sustain its objections.

brief in opposition to those exceptions. On July 1, 1982, the Board issued a Decision and Certification of Representative, adopting, for the most part, the Hearing Officer's findings and recommendations⁸ and certifying the Union as the collective-bargaining representative of Respondent's employees in an appropriate unit.⁹ As noted, Respondent's defense in the instant case is based on matters previously raised in the underlying representation proceeding which have heretofore been considered and rejected by the Board.

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.¹⁰

All issues raised by Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. We therefore find that Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding. Accordingly, we grant the Motion for Summary Judgment.¹¹

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent, a Delaware corporation with offices located at 11040 West King Street, Franklin Park, Illinois, is engaged in the manufacture of plastic cosmetic bottles and related products. During the past calendar year, a representative period, Respondent, in the course and conduct of its business, caused to be shipped to its place of business goods and materials valued in excess of \$50,000 directly

⁸ In its unpublished decision, the Board did not adopt the Hearing Officer's incorrect interpretation of the Board's holding in *T.R.W. Bearings Division, a Division of T.R.W. Inc.*, 257 NLRB 442 (1981), relating to the validity of no-solicitation rules and reiterated that an objective, rather than a subjective, test is to be used in determining whether actions tend to create an atmosphere of fear and reprisal rendering a free election impossible.

⁹ The appropriate unit consists of "All production and janitorial employees of the Employer located at 11040 West King Street, Franklin Park, Illinois, 60131 but excluding office clerical employees, plant clerical employees, professional employees, technical employees, tool and control department employees, i.e., tool and die, tool and machinery, maintenance mechanics, maintenance and tool set-up, inspectors, outside truck drivers, guards and supervisors as defined in the Act."

¹⁰ See *Pittsburgh Plate Glass Co. v. N.L.R.B.*, 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

¹¹ Respondent's Cross-Motion for Summary Judgment is hereby denied.

from points and places located outside the State of Illinois.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

United Electrical, Radio and Machine Workers of America (UE), is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Representation Proceeding*

1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All production and janitorial employees of the Employer located at 11040 West King Street, Franklin Park, Illinois 60131, but excluding office clerical employees, plant clerical employees, professional employees, technical employees, tool and control department employees, i.e., tool and die, tool and machinery, maintenance mechanics, maintenance and tool set-up, inspectors, outside truck drivers, guards and supervisors as defined in the Act.

2. The certification

On October 2, 1981, a majority of the employees of Respondent in said unit, in a secret-ballot election conducted under the supervision of the Regional Director for Region 13, designated the Union as their representative for the purpose of collective bargaining with Respondent.

The Union was certified as the collective-bargaining representative of the employees in said unit on July 1, 1982, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. *The Request To Bargain and Respondent's Refusal*

Commencing on or about July 1, 1982, and at all times thereafter, the Union has requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about July 7, 1982, and continuing at all times thereafter to date, Respondent has refused,

and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that Respondent has, since July 7, 1982, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement.

In order to ensure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785 (1962); *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817; *Burnett Construction Company*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. T.L.B. Plastics Corporation is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. United Electrical, Radio and Machine Workers of America (UE), is a labor organization within the meaning of Section 2(5) of the Act.

3. All production and janitorial employees of the Employer located at 11040 West King Street, Franklin Park, Illinois 60131, but excluding office clerical employees, plant clerical employees, professional employees, technical employees, tool and control department employees, i.e., tool and die, tool and machinery, maintenance mechanics, maintenance and tool set-up, inspectors, outside truck drivers, guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since July 1, 1982, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about July 7, 1982, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, T.L.B. Plastics Corporation, Franklin Park, Illinois, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with United Electrical, Radio and Machine Workers of America (UE), as the exclusive bargaining representative of its employees in the following appropriate unit:

All production and janitorial employees of the Employer located at 11040 West King Street, Franklin Park, Illinois 60131, but excluding office clerical employees, plant clerical employees, professional employees, technical em-

ployees, tool and control department employees, i.e., tool and die, tool and machinery, maintenance mechanics, maintenance and tool set-up, inspectors, outside truck drivers, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its Franklin Park, Illinois, facility copies of the attached notice marked "Appendix."¹² Copies of said notice, on forms provided by the Regional Director for Region 13, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 13, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

¹² In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with United Electrical, Radio and Machine Workers of America (UE), as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All production and janitorial employees of the Employer located at 11040 West King Street, Franklin Park, Illinois 60131, but excluding office clerical employees, plant clerical employees, professional employees, technical employees, tool and control department employees, i.e., tool and die, tool and machinery, maintenance mechanics, maintenance and tool set-up, inspectors, outside truck drivers, guards and supervisors as defined in the Act.

T.L.B. PLASTICS CORPORATION